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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,111	02/17/2004	Van Hunter	BA0275C (NORT10-00368)	6497
33000	7590	07/12/2005	EXAMINER	
DOCKET CLERK P.O. DRAWER 800889 DALLAS, TX 75380			HYUN, SOON D	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Office Action Summary	Application No. 10/780,111	Applicant(s) HUNTER ET AL.	
	Examiner Soon D. Hyun	Art Unit 2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-32 and 49-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-32 and 49-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

ANDY LEE
PATENT EXAMINER

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>08/13/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 49 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,731,599.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 11 of the Patent encompass the limitations of claim 49 of the instant application, i.e., the step of adding in the claim 11 of the Patent is equivalent to the step of selecting the ports that are secure (active or not failed, see the discussion for claim 49, below). Even though the step of determining is omitted in the present application, it is well settled that the omission of an element(s) and its functions is an obvious expedient if the remaining element perform the same function as before *In re Karlson*, 163 USPQ 184 (CCPA 1963). Also note *Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 25 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Kadambi et al (U.S. Patent No. 6,104,696).

Regarding claim 25, Kadambi et al discloses a method comprising:

identifying a Multi-link Trunk (MLT) and a plurality of ports (port 1 and port 2) in which data is to be transmitted (col. 24, lines 24-28 and FIG. 19); and

generating an identification (a trunk port index col. 24, lines 65-66) for the data to be transmitted and a port in the MLT is determined using the identification to transmit the data via the port (col. 25, lines 2-6).

Regarding claim 29, Kadambi et al further discloses a processor (a CPU 52 in FIG. 1) is used to properly configure to process the steps as discussed in claim 1 (col. 24, lines 24-26), i.e., Kadambi et al teaches the processor readable medium as recited.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 26-28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kadambi et al (U.S. Patent No. 6,104,696) in view of Muller et al (U.S. Patent No. 6,016,310).

Regarding claims 26 –28 and 30-32, Kadambi et al (Kadambi) further discloses that the identification is generated using a portion of source address and/or destination address of the data is used to generate the identification (trunk port index), see col. 24, lines 58-67).

However, Kadambi does not teach that the identification is generated by a random number generator, Exclusive-OR operation or a modulus function as recited in the claims

Muller et al (Muller) discloses a method of trunking in a network, wherein identification of a port in a trunk is determined using an Exclusive-OR operation combined with a Modulo operation (a modulus function in claims 28 and 32) or a random generator (col. 11, lines 21-29), thus load balancing among ports in the trunk is implemented.

Therefore, it would have been obvious to one having ordinary skill in the art to incorporate Exclusive-OR operation combined with the Modulo operation or a random generator taught by Muller to have load balancing among ports in the trunk.

8. Claims 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kadambi et al (U.S. Patent No. 6,104,696).

Regarding claims 49, 51, and 53, Kadambi et al (Kadambi) discloses that SW1 has a plurality of ports (1-26) and port 1 and port 2 as one trunk group (col. 24, lines 28-32) and a trunk group could include any of a number of ports based on traffic volume (col. 24, lines 37-41). Therefore, Kadambi teaches the steps of identifying a plurality of ports available and selecting a grouping of ports of the plurality of ports a Multi-Link Trunk (MLT). Kadambi further teaches selecting the grouping of ports that are active (secure), i.e., a failure port is removed from the MLT (see claim 5 of Kadambi). Therefore, logical circuits (a first, a second circuit and a third circuit in the claim 51) for performing corresponding steps are taught by Kadambi.

However, Kadambi does not explicitly teach that at least one port of the MLT is located in different interface card.

It would be apparent to those of skill in the art that one interface card has one or more ports and thus it would be obvious to one having ordinary skill in the art to use an interface card having one port for SW1 of Kadambi if no unexpected results can be seen from the use of the card.

Therefore, it would have been obvious to one having ordinary skill in the art to locate at least one port in a different interface card.

Regarding claims 50 and 52, refer to the discussion for claim 49. Kadambi further discloses to determine if a port included in an MLT has failed (see claim 5). Therefore, logical circuits (a first and a second circuit in the claim 50) for performing corresponding steps are taught by Kadambi.

However, Kadambi does not explicitly teach to select another port from the plurality of ports and to replace the failed port with the selected port, but Kadambi teaches that a trunk group could include any of a number of ports based on traffic volume (col. 24, lines 37-41).


Therefore, it would have been obvious to one having ordinary skill to select another port from the plurality of ports and to replace the failed port with the selected port to meet the traffic volume.

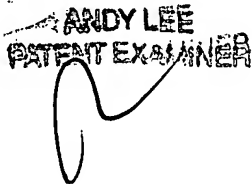
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


S. Hyun
06/15/2005


ANDY LEE
PATENT EXAMINER